

IN RE P3 HEALTH GROUP HOLDINGS, LLC

OPINION REGARDING COURT OF CHANCERY JURISDICTION

SUMMARY AUTHORED BY SHIRA R. FREIMAN

Consol. C.A. No. 2021-0518-JTL

Court of Chancery of the State of Delaware

September 12, 2022

Key Takeaway: *Delaware Courts may exercise personal jurisdiction over individuals who participate materially in the business of an LLC, regardless of title or membership status.*

In *In re P3*, Hudson Vegas Investment SPV, LLC sued a variety of defendants in an amended complaint including Jessica Puathasnanon, the general counsel and chief legal officer of Delaware entity P3 Health Group Holdings, LLC ("P3") for breach of fiduciary duties purportedly owed to P3 and its members. Puathasnanon moved to dismiss the claims under Court of Chancery Rule 12(b)(2), asserting lack of personal jurisdiction. Vice Chancellor J. Travis Laster denied the motion and found Puathasnanon subject to the Court's jurisdiction.

Personal jurisdiction is properly exercised in Delaware when the following two requirements are met: 1) the plaintiff identifies a valid method of serving process; and 2) due process provides for sufficient minimum contacts between the defendant and Delaware, such that exercising personal jurisdiction "does not offend traditional notions of fair play and justice." Section 18-109(a) of the Delaware Limited Liability Company Act ("DLLCA" or the "Act") outlines service of process for specific jurisdiction over a manager of a limited liability company ("LLC"). Section 18-109(a) differentiates between *formal* managers named in an LLC agreement, and *acting* managers that "participate[] materially in the management of the limited liability company[.]" A defendant-manager impliedly consents to jurisdiction in satisfaction of due process when: 1) the allegations against the manager pertain specifically to the manager's duties and obligations as manager of a Delaware LLC; 2) resolving the issue entangles Delaware law; and 3) "Delaware has a strong interest in providing a forum for the resolution of the dispute relating to the manager's ability to discharge his managerial functions."

Defendant Puathasnanon was both general counsel and chief legal officer of P3, which the Court found plausible to support the inference that she qualified as an acting manager for the purposes of Section 18-109(a)'s service of process. It reasoned that Puathasnanon's full-time obligations and overall advisement of P3 supported the requisite material participation. The Court further compared Section 18-109 of DLLCA to Section 3114(b) of Title 10 of the Delaware Code, which it described as "the analogous jurisdictional statute for corporations." Despite Puathasnanon's counter that Section 3114(b) was amended to encompass senior officers including chief legal officers for jurisdictional purposes and DLLCA contained no similar provision, the Court found the argument without merit. It explained that, unlike a corporation, an LLC is a "flexible and primarily contractual entity[,]" and that "Section 18-109(a)(ii) empowers Delaware courts to exercise personal jurisdiction over individuals who participate materially in the business of an LLC, regardless of title or membership status, for claims relating to their actions." Accordingly, DLLCA's language is "encompassing, not exclusionary[,]" so the Act's failure to mention specific positions does not prevent the exercise of personal jurisdiction. Regarding due process, the Court found that Puathasnanon impliedly consented to the Court's jurisdiction simply by her employment as general counsel and chief legal officer of P3, a *Delaware* entity.

Vice Chancellor Laster denied Puathasnanon's 12(b)(2) motion, finding her subject to the Court's jurisdiction. As an acting manager of P3, a Delaware entity, Puathasnanon both impliedly consented to such jurisdiction and made sufficient contacts with the state to satisfy due process.